

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Thomas Lumpkin

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S.D. OF N.Y.

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

**COMPLAINT  
FOR EMPLOYMENT  
DISCRIMINATION**

Bronxworks, Inc

Jury Trial: ☒ Yes ☐ No

(check one)

Scott Auwarter

Eileen Torres

(In the space above enter the full name(s) of the defendant(s).  
If you cannot fit the names of all of the defendants in the space  
provided, please write "see attached" in the space above and  
attach an additional sheet of paper with the full list of names.  
Typically, the company or organization named in your charge  
to the Equal Employment Opportunity Commission should be  
named as a defendant. Addresses should not be included here.)

16CV5032

This action is brought for discrimination in employment pursuant to: (check only those that apply)

☒

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

**NOTE:** In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

☒

Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634.

**NOTE:** In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.

☐

Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117.

**NOTE:** In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

☒

New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status).

☒

New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131 (actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status).

**I. Parties in this complaint:**

- A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name Thomas Lumpkin  
 Street Address 167-10 Crocheron Avenue  
 County, City Queens, Flushing  
 State & Zip Code New York, 11358  
 Telephone Number (917)539-2002

- B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant Name Bronxworks, Inc.  
 Street Address 60 East Tremont Avenue  
 County, City Bronx, New York  
 State & Zip Code New York, 10453  
 Telephone Number \_\_\_\_\_

- C. The address at which I sought employment or was employed by the defendant(s) is:

Employer Bronxworks Jackson Avenue Family Residence  
 Street Address 691 East 138th Street  
 County, City Bronx, New York  
 State & Zip Code New York, 10454  
 Telephone Number (718)993-8900

**II. Statement of Claim:**

State as briefly as possible the facts of your case, including relevant dates and events. Describe how you were discriminated against. If you are pursuing claims under other federal or state statutes, you should include facts to support those claims. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. The discriminatory conduct of which I complain in this action includes: *(check only those that apply)*

\_\_\_\_\_ Failure to hire me.  
 \_\_\_\_\_ Termination of my employment.  
☒ Failure to promote me.  
 \_\_\_\_\_ Failure to accommodate my disability.  
 \_\_\_\_\_ Unequal terms and conditions of my employment.

Retaliation.

Other acts (specify): \_\_\_\_\_.

**Note:** Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.

B. It is my best recollection that the alleged discriminatory acts occurred on: 3 June, 2015.  
Date(s)

C. I believe that defendant(s) (check one):

☒ is still committing these acts against me.

\_\_\_\_\_ is not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (check only those that apply and explain):

☒ race African-American ☒ color Black

☐ gender/sex \_\_\_\_\_ ☐ religion \_\_\_\_\_

☐ national origin \_\_\_\_\_

☐ age. My date of birth is 28 October, 1937 (Give your date of birth only if you are asserting a claim of age discrimination.)

☐ disability or perceived disability, \_\_\_\_\_ (specify)

E. The facts of my case are as follow (attach additional sheets as necessary):

Approximately ten years ago, the complainant applied for the position of Security Coordinator at Jackson Avenue Family Residence. After three interviews conducted by an interview committee, I was given to understand that by virtue of my status as a retired member of the New York Police Department, and the subsequent accumulation of in excess of fifteen years of executive and management experience in the fields of security and fire safety, I would be offered the position. The offer of employment was the unanimous decision of the interview committee. Shortly thereafter, I was notified that the offer had been withdrawn because, acting solely on his own authority, Scott Auwarter overrode the committee, and gave the position to a much younger, white male recent NYPD retiree.

**Note:** As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or the New York City Commission on Human Rights.

### III. Exhaustion of Federal Administrative Remedies:

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding defendant's alleged discriminatory conduct on: 10 June, 2015 (Date).

B. The Equal Employment Opportunity Commission (*check one*):

☒ has not issued a Notice of Right to Sue letter.  
☐ issued a Notice of Right to Sue letter, which I received on 1 April, 2016 (Date).

*Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.*

C. Only litigants alleging age discrimination must answer this Question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (*check one*):

☒ 60 days or more have elapsed.  
☐ less than 60 days have elapsed.

#### IV. Relief:

**WHEREFORE**, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs, as follows: and compensatory damages for lost wages in the amount of \$250,00.00

*(Describe relief sought, including amount of damages, if any, and the basis for such relief.)*

**I declare under penalty of perjury that the foregoing is true and correct.**

Signed this 28 day of JUNE, 2016

Signature of Plaintiff

Address

[Signature]  
167-10 CROCKERON AVE  
FLUSHING NY 11358

Telephone Number

Fax Number (*if you have one*)

917 539 2002

EEOC Form 161 (11/09)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Thomas J. Lumpkin**  
**167-10 Crocheron Avenue, Apt. 5a**  
**Flushing, NY 11358**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**520-2015-02616**

**D. Young,**  
**Investigator**

**(212) 336-3758****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

*Kevin J. Berry*  
**Kevin J. Berry,**  
**District Director**

**MAR 29 2016**

(Date Mailed)

Enclosures(s)

cc: **Attn.: Director of Human Resources**  
**BRONXWORKS**  
**60 East Tremont Avenue**  
**Bronx, NY 10453**



EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To:      Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> FEPA  <input checked="" type="checkbox"/> EEOC         </div> <div style="text-align: right;"> <b>520-2015-02616</b> </div> </div>	
<b>New York State Division Of Human Rights</b> and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) <b>Mr. Thomas J. Lumpkin</b>		Home Phone (Incl. Area Code) <b>(718) 457-7074</b>	Date of Birth <b>10-28-1937</b>
Street Address      City, State and ZIP Code <b>70-45 45th Avenue, Woodside, NY 11377</b>			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>BRONXWORKS, INC.</b>		No. Employees, Members <b>201 - 500</b>	Phone No. (Include Area Code) <b>(646) 393-4023</b>
Street Address      City, State and ZIP Code <b>60 E. Tremont Avenue, Bronx, NY 10453</b>			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address      City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE Earliest      Latest <b>06-05-2015      06-05-2015</b> <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). <p>I have worked with the above Respondent since 4-18-2005 without performance incidents or other issues. My current title is Security Coordinator. I believe I am qualified for my position. In the beginning of 2012 my employer believed I was qualified for and promoted me to the title of the Director of Security (DOS). However, I believe that I was passed over for consideration to future promotion to the position of the Director of Security based on my race (Black) and my age (over seventy) in violation of Title VII of the Civil Rights Act of 1964, as amended, as well as, the Age Discrimination in Employment Act.</p> <p>Approximately, three years ago in 2012, a white male, David Pobereskin (in his late 40's) was hired as the Director of Security. At that time, I was the Director of Security as well. Respondent had two Directors of Security persons. I believe Assistant Executive Director, Scott Auwater (white, 40; something) purposefully held me accountable for events over which I had no authority or control in 2012. Specifically, a Security Coordinator, over whom I had no authority, was forcing his direct reports to work seven days a week. Following the barrage of email communication from Auwater laden with acrimonious accusations of my...</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.  I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements <div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> </div> I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <b>August 12<sup>th</sup> 2015</b>	
Date <b>12 Aug 2015</b> Charging Party Signature		Notary Public, State of New York Registration #01BA6131B Qualified in Bronx County Commission Expires Aug 1, 2017	

EEOC Form 5 (11/09)

**CHARGE OF DISCRIMINATION**

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Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA  
☒ EEOC
**520-2015-02616****New York State Division Of Human Rights**

and EEOC

State or local Agency, if any

purported mismanagement of the Security Coordinator, I felt compelled to resign from the position of the Director of Security, based on the hostile work environment. I believe Mr. Auwater's public and private attacks on my professionalism were based on racial and ageist discrimination against me. In partial support of my position, the other Director of Security at the time, Mr. Pobereskin was not held to the same standard and was not held accountable for the security coordinator's misdeeds. Pobereskin is white and at least three decades younger than me.

On 7-5-2015, I notified the HR Manager, Tamika Mikucki that I wanted to file a complaint of racial discrimination as it related to my promotion. As of the writing of this instrument, upon information and belief, Respondent has not taken my complaint seriously as evidenced by it not scheduling a meeting to discuss my concerns and by not initiating an investigation into the discrimination of which I am complaining.

In an effort to hide or circumvent its race and age biased actions against me, Respondent posted the position of the DOS for the first time in its internal intranet system. Before the posting on 7-17-2015, Mr. Auwater was the sole decision maker for promotion and hiring for the DOS position. After the vacancy announcement, a committee of seven members was convened to conduct interviews for the DOS position. However, before the announcement of the job opening, and before the committee was convened, Mr. Auwater had already announced and decided who the successful candidate would be. More troubling was that Auwater was among the seven committee members interviewing candidates for the DOS position. This announcement, interview, and selection process speaks volumes about Respondent bending over backwards to hide its position that Pobereskin, a white male who is more than thirty years my junior, remain in the position and would be selected for the DOS position. To emphasize my point, Respondent advertised for a position that was already filled and conducted mock interviews to justify its earlier announcement that Pobereskin would be the DOS as of July 1, 2015.

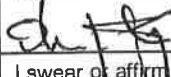
I was treated differently than my younger comparator when I was asked to present a resume for the upcoming interview. Upon information and believe, Mr. Pobereskin was not asked to do the same. I was interviewed on 7-29-2015 by the committee of seven. The demographics are for the committee; three males of whom two are forty-something, and one is thirty-something. The males consist of two whites and one Hispanic. The remaining four committee members are female of whom there are three Hispanics and one Black. There are three approximate forty year olds and one thirty-something female. All of the committee members are between thirty and forty years younger than me which is a significant age gap. I believe that my race (Black) and my age (over seventy) are being used to exclude me from consideration for promotion to the position of the Director of Security in violation of the statutes mentioned earlier.

For all of the above reasons I believe that I am being discriminated against based on my race and age which has caused significant harm that has taken the form of harassment, no consideration for promotion, disparate treatment and a hostile work environment. My physical and mental state has been adversely affected by the above bias.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

 **X**  
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
 (month, day, year) August 12<sup>th</sup> 2015

Date

Charging Party Signature

Notary Public, State of New York  
 Registration #01BA6131383  
 Qualified in Bronx County  
 Commission Expires Aug 1, 2017

**THOMAS LUMPKIN**

I am a Black male American over 60 years of age. I am currently employed, and have been so for approximately 10 years, as the, Security Coordinator at Jackson Avenue Family Residence by Bronxworks, (formerly Citizens Advice Bureau). Bronxworks is an eleemosynary company with approximately 700 employees located within the borough of the Bronx which provides a wide range of social service programs to Bronx residents. Part of these programs entails the provision of shelter to families in transition in three homeless shelters. Jackson Avenue Family Residence is one of those shelters. Of the approximately 700 employees in Bronxworks, less than one percent of the positions designated as "Director" or above, are held by Black males. Company policy and protocol require that job positions for initial employment, and promotion, be filled only after the position has been promulgated and qualified candidates have been vetted.

The following is in aid of my formal complaint of "discrimination in employment" based on, my race, and my age.

I am a New York Police Department retiree, and subsequent to retirement, I have acquired an extensive background in the provision, and management of security personnel, and in the oversight of facility fire safety requirements (SEE: attached resume)

As the Security Coordinator at Jackson Avenue Family Residence, I report to, and am supervised by the Residence Director. I have consistently performed in an exemplary and extraordinary manner.

I submit that I have been the victim of a sustained campaign by the Bronxworks Assistant Executive Director Scott Auwarter to deprive me of my right to equal employment opportunity.

Mr. Auwarter, the Bronxworks Assistant Executive Director has consistently hired and promoted over me, in violation of company policies and protocols, young, white males off the street who possess credentials and qualifications vastly inferior to mine, rather than me.

I was initially interviewed for the position at Jackson by an interview committee of three people: the Residence Director; the Operations Director; and the Director of Social Services. I was given to understand that in all respects, I was unanimously the selected candidate. Shortly thereafter, I was advised that the job offer had been withdrawn, and the position as Security Coordinator at Jackson, on the sole authority of Mr. Auwarter had been granted to a younger, male, white recent New York Police Department retiree, John Caban who possessed no experience or expertise in the private security area.



Approximately one year later Bronxworks, (then Citizens Advice Bureau) opened a new family shelter, the Willow Avenue Family Residence. Mr. Caban was moved to the new facility and promoted by Mr. Auwarter to Director of Security. I was offered, and accepted the position as Security Coordinator at Jackson. Thereafter, approximately a year later, Mr. Caban resigned and I advised Mr. Auwarter of my desire to be considered for the position as Director of Security. Mr. Auwarter refused to entertain my request, and hired as Security Coordinator at Willow off the street, a younger, male, white recent New York Police Department retiree, Frank Visconti who possessed no experience or expertise in the private security area. Three months into Mr. Visconti's' obligatory six month probationary period, without notice or publication, Mr. Auwarter promoted him to Director of Security. Subsequently, Mr. Visconti "passed away" and after a an appropriate period of time, I again voiced my interest in being promoted to Director of Security to Mr. Auwarter. I was interviewed by a two person recruitment committee, of which Mr. Auwarter was not a part, and advised that I was the successful candidate. After a wait of several weeks, I was advised, during a meeting with Mr. Auwarter, and the Bronxworks Director of Human Resources/General Counsel Eileen Torres that I was to be promoted to Director of Security. My promotion was never promulgated or announced. Shortly after my promotion, Mr. Auwarter hired off the street, a younger white, male, police department retiree (not NYPD) David Pobereskin, as the Director of Security thereby affording Bronxworks with two Directors of Security. Mr. Pobereskin had extremely limited job experience in the social service area. Mr. Auwarter then contrived to hold me responsible for a situation which had occurred in another facility wherein I had no authority or responsibility, and about which I had no knowledge. He publicly excoriated, berated, and humiliated me to such an extent that for my psychological well being, I was constrained to surrender my position as Director of Security, and shortly thereafter, he designated Mr. Pobereskin as "Corporate Director of Security".

On 3 June, 2015, during a visit by Mr. Pobereskin at Jackson I was informed that per Mr. Auwarter, I was no longer to report to the Jackson Residence Director but to him. I believe that this decision by Mr. Auwarter, placing me in a subordinate position to a younger, white male, hired off the street, lacking in appropriate experience and qualifications is meant to subjugate me, humiliate me, and deprive me of my right to a work environment free of racial and age discrimination